

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

IN THE MATTER OF THE DETERMINATION OF
THE RIGHTS OF THE VARIOUS CLAIMANTS TO
THE WATER OF LONG VALLEY CREEK STREAM
SYSTEM WITHIN LASSEN, SIERRA, AND
PLUMAS COUNTIES, CALIFORNIA

SUPPLEMENTAL
ORDER OF
DETERMINATION
WR 82-6

INTRODUCTION

On September 14, 1979, the Supreme Court of the State of California held that the State Water Resources Control Board (Board) has broad authority to define and otherwise limit future riparian rights in the statutory adjudication of rights to the use of water under Chapter 3 (commencing with Section 2500), Part 3, Division 2 of the Water Code, but that the Legislature had not authorized the Board to completely extinguish claims of future riparian rights in the circumstances prevailing in the Long Valley Adjudication. In Re Waters of Long Valley Creek Stream System, (1979) 25 Cal.3d 339. The Supreme Court thus reversed the decision of the Superior Court of Lassen County and remanded the case for proceedings not inconsistent with the opinion. On May 4, 1981, the Superior Court granted the Board's motion to refer to the Board the question of how the Decree should be amended concerning the exercise of prospective riparian rights.

BACKGROUND AND HISTORY OF THE PROCEEDING

1. Long Valley Creek System lies astride the California-Nevada border. The stream has its origin about eight miles northwest of Reno, Nevada,

and extends northwestly about 45 miles to the east end of Honey Lake near Herlong, California. Balls Creek is a major tributary of Long Valley Creek.

2. Claimant Ramelli owns land in Sierra County within the Long Valley Creek Stream System. His ownership includes 2,884 acres of land allegedly riparian to Balls Creek which is not presently irrigated for beneficial use.

3. On April 4, 1966, nine owners of land or users of water in the Long Valley Creek Stream System filed a Petition for Determination of Water Rights with the Board for the stream system in California. The Board entered an Order Granting Petition for Determination of Water Rights on September 5, 1968, and on January 16, 1975 the Board adopted its Order of Determination.

4. Claimant Ramelli filed a Notice of Exception to the Order of Determination on April 10, 1975. The exceptions to the Order of Determination were made on the following grounds:

a. The Order of Determination failed to include an adjudication of Claimant Ramelli's unexercised riparian rights.

b. Schedule B-4 of the Order of Determination allotted less water than the amount previously adjudicated to Mr. Ramelli in Evans v. Flag v. Ramelli, Sierra County Superior Court No. 2809.

c. Schedule B-4 allotted Green Gulch Ranch, Inc. and Edith M. Evans first priority rights for irrigation; and

d. The season for irrigation use as applied to Mr. Ramelli by the third sentence of paragraph 15 of the Order of Determination.

5. By memorandum dated July 1, 1976, the Superior Court disallowed all of the exceptions, except that the irrigation season for Claimant Ramelli was extended. Judgment was entered on August 9, 1976, in Book 27 at page 20

and on September 27, 1976, the Court signed an order correcting certain clerical errors.

6. Claimant Ramelli filed a Notice of Appeal on October 6, 1976. The exceptions were those set forth in subdivisions (a), (b), and (c) of paragraph 5 above. The Court of Appeal, Third Appellate District, filed its opinion on August 22, 1978. In Re Waters of Long Valley Creek Stream System, (1978) 84 Cal.App. 3d 140.

7. The Board petitioned the California Supreme Court for hearing after the decision of the Court of Appeal, Third Appellate District, on September 28, 1978. The Supreme Court granted the petition for hearing and transferred the cause to that court on October 18, 1978.

8. The Supreme Court rendered its opinion on September 14, 1979. Claimant Ramelli filed a Petition for Rehearing on October 1, 1979, and the Supreme Court denied the petition on October 25, 1979. A remittitur from the Supreme Court dated October 25, 1979, was filed thereafter with the Superior Court. As noted in the opening paragraph, the Superior Court has referred to the Board the question of how the Decree should be amended concerning the prospective exercise of unexercised riparian rights.

IN RE WATERS OF LONG VALLEY CREEK

STREAM SYSTEM (1979), 25 Cal. 3d 339

9. Claimant Ramelli raised three issues in his appeal. The first and major issue concerned the Superior Court's decision to uphold the Board's determination to extinguish Claimant Ramelli's prospective use of water under a claim of riparian right for 2,884 acres of land in the Balls Creek watershed. The second and third issues related to the Superior Court's decision to uphold the Board's determination not to accord res judicata effect to the provisions of the prior judgment in Evans v. Flagg v. Ramelli, Sierra County

Superior Court No. 2809. As to the latter two issues, the Supreme Court concluded that the Superior Court was correct in rejecting Ramelli's assertion that said prior judgment be accorded res judicata effect. As to the first and major issue, the Supreme Court reversed.

10. In reversing, the Supreme Court stated in some detail the scope of the Board's and the judiciary's power to define and otherwise limit the prospective use of water under a riparian right. The Supreme Court stated, in part:

"For the future guidance of the Board...we undertake to identify the limitations on unexercised riparian claims that are constitutionally permissible and thus authorized by the statute.... Thus, the Board is authorized to decide that an unexercised riparian claim loses its priority with respect to all rights currently being exercised. Moreover, to the extent that an unexercised riparian right may also create uncertainty with respect to permits of appropriation that the Board may grant after the statutory adjudication procedure is final, and may thereby continue to conflict with the public interest in reasonable and beneficial use of state waters, the Board may also determine that the future riparian right shall have a lower priority than any uses of water it authorizes before the riparian in fact attempts to exercise his right. In other words, while we interpret the Water Code as not authorizing the Board to extinguish altogether a future riparian right, the Board may make determinations as to the scope, nature and priority of the right that it deems reasonably necessary to the promotion of the state's interest in fostering the most reasonable and beneficial use of its scarce water resources."

With this guidance in mind, the Board recommends that the decree be amended to define and otherwise limit the prospective use of water under a riparian right as set forth below. Paragraph 3 is not related to the issue of the prospective use of water under a riparian right; however, it is recommended as an addition to the decree. The purpose of this paragraph is to improve upon the effectiveness of any watermaster service that may be formed. Paragraphs 8 and 9 are to correct clerical errors in the decree.

SUPPLEMENTAL ORDER DETERMINING
AND ESTABLISHING RIGHTS

1. A new paragraph 52 should be added to read as follows:

52. Unexercised Riparian Rights

(a) All claimants and other persons not named in this decree owning land riparian to streams in the Long Valley Stream System have unexercised riparian rights to the use of water; however, any right that is not defined in this decree shall be defined and exercised only in accordance with the provisions of this paragraph.

(b) Any person identified in subparagraph (a) above may apply to the court under paragraph 55 (as renumbered) or to the State Water Resources Control Board (Board) under paragraph 53 (as renumbered) for definition of a riparian right which is not defined in this decree at the time of application. If the Court finds unappropriated water is available and that such person proposes diligently, reasonably, and beneficially to exercise such right, the court shall define the right in terms consistent with the proposed use. Any riparian right defined pursuant to this paragraph shall be the subject of a supplemental decree.

(c) Riparian rights defined pursuant to this paragraph shall be subject (1) to all rights which are defined in this decree, including any supplemental decree, as said decree exists on the date of application to the court or to the Board by a riparian claimant, and (2) to any appropriative right initiated by application, in accordance with Part 2 (commencing with Section 1200)

of Division 2 of the Water Code, prior to the date of application to the court or to the Board by a riparian claimant.

2. A new paragraph 53 should be added to read as follows:

53. Changes in the Exercise of Rights

Any person who wishes to change or modify the exercise of his rights set forth in the decree or who wishes to exercise previously unexercised riparian rights may request the State Water Resources Control Board (Board) to investigate said change, modification or proposed activation of unexercised riparian rights. The Board shall notify all affected parties of its investigation and give them an opportunity to object to the proposed change. Following its investigation, the Board shall file a report with the Court which: (1) describes the proposed change, modification or activation of unexercised riparian rights; (2) summarizes any objections to the proposed change, modification or activation of unexercised riparian rights; (3) determines whether the proposed change or modification is in accordance with applicable law; (4) determines whether unappropriated water is available for the activation of an unexercised riparian rights; and (5) makes a recommendation regarding the proposed change, modification or activation of previously unexercised riparian rights. Changes or modifications of the decree or allotments of water to holders of previously unexercised riparian rights may be ordered by the Court and entered as a supplemental decree. The Board shall be entitled to receive reimbursement for its expenses of investigation. Proceedings on the apportionment of expense shall be as nearly as may be in accordance with the provisions of Article 13, Chapter 3, Part 3, Division 2

of the Water Code, commencing with Section 2850. Nothing in this paragraph shall restrict any right which any person may have under any statute or common law to change or modify the exercises of his rights set forth in the decree.

3. A new paragraph 54 should be added to read as follows:

54. Water Rights Disputes in a Watermaster Service Area

In the event a watermaster service area is created in accordance with applicable law, the watermaster shall distribute the water in accordance with the decree. If a water rights dispute arises between users, the watermaster shall regulate those headgates and down ditch laterals as set forth in the decree and as necessary to settle the dispute. Any party who alleges that the watermaster is not regulating his water right in accordance with the decree may apply to the Board to investigate said allegations. The Board shall notify all affected parties of its investigation and give them an opportunity to respond to the allegations. If any affected party requests a hearing or other proceedings in lieu of hearing, the Board shall duly notice and schedule a hearing or other proceeding in lieu of hearing if parties waive hearing. Following its investigation or hearing the Board shall file its report which determines whether the watermaster has regulated the water right in accordance with the decree and which makes its recommendation to the Court for any change, modification, or clarification of the decree. Any change, modification, or clarification of the decree recommended by the Board shall be entered, subject to Court review and approval, as a supplemental decree. The Board shall be entitled to receive reimbursement for its expense of such investigation.

Proceedings on the apportionment of expenses shall be as nearly as may be in accordance with the provisions of Article 13, Chapter 3, Part 3, Division 2 of the Water Code, commencing with Section 2850. Nothing in this paragraph shall restrict any right which any person may have under any statute or common law to seek enforcement of this decree or to seek any other relief.

4. Renumber paragraph 52 as paragraph 55 and amend to read as follows:

55. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED: That the Court retains continuing jurisdiction of the parties to this proceeding, and of the subject matter hereof, and upon application of any party hereto, or successor in interest thereof, or upon its own motion, to review this decree and to change or modify the same as the interests of justice may require. In its discretion the Court may refer petitions to change or modify the exercise of a decreed right or to exercise previously unexercised riparian rights to the State Water Resources Control Board for investigation and report as set forth in paragraph 53.

5. Renumber existing paragraph 53 as paragraph 56.

6. Renumber existing paragraph 54 as paragraph 57.

7. Renumber paragraph 55 (page 108) as paragraph 58 and amend to to read as follows:

58. Except as provided in paragraph 52 (as renumbered), any person who failed to appear and submit proof of his claim as provided in

Chapter 3, Division 2 of the Water Code, shall be barred and estopped from subsequently asserting any rights heretofore acquired upon the Long Valley Creek Stream System as defined herein and has forfeited all rights to water heretofore claimed by him on said system, other than as provided in this decree, unless entitled to relief under the laws of this State.

8. Substitute Diversion Number 56d-4&5-C for 56e-4&5C under Claimant Saraleugi Land and Livestock Company in Schedule 1 (page 60).

9. Substitute Diversion Number 56d (4&5-C) for 56e (4&5-C) under Claimant Saralegui Land and Livestock Company in Schedule C (page 104).

Dated: August 19, 1982

ABSENT

Carla M. Bard, Chairwoman

L. L. Mitchell

L. L. Mitchell, Vice-Chairman

Jill D. Golis

Jill D. Golis, Member

F. K. Aljibury

F. K. Aljibury, Member